

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-A-160-2021 (O&M)
Decided on : 12.07.2022**

State of Haryana

... Applicant

Versus

Jagdish

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Rajesh Gaur, Addl. AG, Haryana.

G.S. Sandhawalia, J. (Oral)

CRM-28834-2021

Application for condonation of delay of 45 days in filing the application for grant of leave to appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of Deputy Superintendent of Police, Hansi. Delay of 45 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-A-160-2021

Challenge by the State in the present application filed under Section 378 (3) Cr.P.C. is for grant of leave against the judgment of acquittal dated 16.11.2019 passed by the Additional Sessions Judge, Hisar.

Vide the impugned judgment the trial Court acquitted the respondent-accused of the charge, which had been framed against him under Section of 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') in FIR No.315 dated 02.10.2017 registered at Police Station Sadar Hansi, District Hisar. The allegation as such against the respondent was that 1.5 Kgs *Ganja* had been recovered from the polythene

bag, which he was carrying when caught by the police party on 02.10.2017.

After taking into consideration the evidence of the prosecution which was in the form of 11 witnesses, acquittal was recorded on the ground that there was no independent witness and neither the Investigating Officer had noted down any names of persons, who had refused to take part in the proceedings. Thus, the sanctity of the search as such was doubted and also the fact that provisions of Section 50 had not been complied with and that the Investigating Officer in the complaint was the same person, as partly investigation was conducted by ASI Mohan Lal. Apart from that there was a delay of 10 days in sending the samples for examination to FSL and resultantly the delay on that account also led to the reason for acquittal.

Counsel for the State has vehemently submitted that an effort had been made to inform the accused of his right of search before the Gazetted Officer or Magistrate, but he reposed confidence in the police and, therefore, sufficient compliance of Section 50 of the NDPS Act had been made. It is submitted that no prejudice had been caused to the accused on account of delay in sending the samples and general public never wants to join the police investigation and, therefore, reliance upon the statement of police witnesses should have been accepted by the Court.

After having gone through the judgment in question, we are of the considered opinion that the trial Court has not acted in any illegal or irregular manner while recording the acquittal. It has taken a probable

view and, therefore, the presumption of innocence has got reinforced in favour of the respondent. The said principle has been laid down by the Apex Court in the case of **Sanjeev & another Vs. State of Himachal Pradesh, 2022 (2) RCR (Criminal) 341**, wherein the Apex Court had set aside the judgment of the High Court of Himachal Pradesh, which had upset the acquittal in the case of recovery of *Charas* of 1.5 Kgs. Reliance can also be placed upon the judgment **C. Antony Vs. K.G. Raghavan Nair, 2002 (4) RCR (Criminal) 750**, **Gamini Bala Koteswara Rao & others vs State of Andhra Pradesh, AIR 2010 SC 589** and **Anil Kumar Gupta Vs. State of U.P., 2011 (2) RCR (Criminal) 292**, wherein it has been laid down in principle that in the absence of any perversity the appellate Court would not normally interfere in the order of acquittal of the trial Court.

The Apex Court in the case of **Sanjeev & another (supra)** while relying upon its Constitutional Bench judgment passed in **State of Punjab Vs. Baldev Singh, (1999) 6 SCC 172** and **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, (2011) 1 SCC 609**, while upsetting the conviction and the order which had been upheld in appeal came to the conclusion that the appellant who was alleged to be in possession of *Charas* of 2.5 Kgs had never been produced before any Magistrate or Gazetted Officer. It was, accordingly, held that once the recovery was not made in the presence of any Magistrate or Gazetted Officer, the conviction could not be justified, in view of the fact that mandate under Section 50 of the NDPS Act had not been complied with.

The trial Court has relied upon the judgment passed in **Arif Khan @ Agha Khan Vs. State of Uttarakhand, (2018) 18 SCC 380**. Reliance can also be placed upon the judgment passed in **Union of India Vs. Shah Alam and another, 2009 (3) RCR (Criminal) 158**, wherein the accused were carrying the *Heroin* in the shoulder bags carried by them and the benefit of acquittal had been granted by the Allahabad High Court. The argument raised that the recovery was made from the bag and, therefore, Section 50 of the NDPS Act would not be applicable was rejected while upholding the view of the High Court.

In the present case as noticed above, the respondent was carrying a polythene bag from which the contraband was recovered and, therefore, the provisions of Section 50 of the NDPS Act had not been complied with. The trial Court also noticed that the recovery was from near a reputed school on the Hansi-Data Road, which is a public road and, therefore, in the absence of any independent witness or any material to show that some had been sought to be joined by the Investigating Officer, the search could not be sanctified and the benefit of doubt was rightly granted to the accused.

It is not disputed that the sample was only sent on 13.10.2017, which is after 10 days from the date it was recovered and, therefore, reliance by the trial Court on the judgment of this Court in **Fateh Singh vs. State of Haryana, 2006 (2) RCR (Criminal) 762** was rightly relied upon.

Keeping in view the above we are of the considered opinion

that the view which has been taken is a probable view and in the absence of any perversity since all evidence has necessarily been scanned and discussed, no case is made out for interference in the well reasoned order passed by the trial Court. Accordingly, the application for grant of leave to appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

July 12, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No